IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.116 OF 2004

Patric Francis Tuscano ...Petitioner

Versus

The State of Maharashtra & Ors. ...Respondents

.....

Ms.Geeta Hatkar i/b Mr.Naveen Chomal for Petitioner.

Mr.V.B.Konde-Deshmukh, A.P.P. for Respondents.

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CORAM: A.M.KHANWILKAR, J.

OCTOBER 15, 2004.

P.C.

1. Heard Counsel for the parties.

2. Rule. Rule made returnable forthwith, by consent. Mr.Konde-Deshmukh, A.P.P. waives notice for Respondents.

3. As short question is involved, the matter is taken up for final disposal forthwith, by

consent.

4. By this Petition, the Petitioner prays for direction to the Respondents for being released on furlough leave as per the Rules. The Petitioner had applied to the appropriate authority. However, that application came to be rejected on 20th November 2003. Only two reasons have been recorded in the order passed by the appropriate authority. The first reason is that the Petitioner is an active member of notorious gang of Bhai Thakur and the second reason is that on earlier occasion, Petitioner surrendered one day late.

5. After going through the records and considering the arguments, I find substance in the grievance made on behalf of the Petitioner that both the grounds are unsustainable.

6. Insofar as the first ground which weighed with the Authority is concerned, it is argued that, that ground could have been used against the Petitioner even on the earlier occasion, whereas, the record indicates that the Petitioner was

released on furlough leave on earlier one occasion. If it is so, this ground for rejection of application is untenable.

7. Insofar as the second ground, it is brought to my notice that the Petitioner has already suffered punishment for one day late reporting on the earlier occasion. If it is so, that cannot be once again used against the Petitioner while considering his fresh application, which is otherwise permissible by Rules. In any case, on the earlier occasion, the Petitioner has reported only one day late. Besides, the Petitioner has permanent place of residence and his past record indicates that he had surrendered as and when the bail bond was cancelled and made himself available whenever required. There is nothing on record to suggest that Petitioner has ever absconded or jumped any of the conditions of the bail. Accordingly, this Petition succeeds.

8. The Respondents are directed to release the Petitioner on furlough leave, as per the Rules.

9. Petition disposed of on the above terms.

A.M.KHANWILKAR, J.